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4                   UNITED STATES DISTRICT COURT  
5                   WESTERN DISTRICT OF WASHINGTON  
6                   AT TACOMA

7 PAUL MARKS,

8                   Plaintiff,

9                   v.

10 STATE OF WASHINGTON ET. AL.,

11                   Defendants.

12                   Case No. C18-5516-RBL-TLF

13                   ORDER TO SHOW CAUSE OR  
14                   AMEND THE COMPLAINT; AND  
15                   ORDER STRIKING MOTION FOR  
16                   DEFAULT JUDGMENT

17                   This matter is before the Court on plaintiff's filing of a proposed civil rights complaint.<sup>1</sup>

18 Plaintiff has been granted leave to proceed *in forma pauperis* by separate order. In light of the  
19 deficiencies in the complaint discussed herein, the undersigned will not direct service of the  
20 complaint at this time. Plaintiff may, by the date set forth below, either: (1) explain and show  
21 cause why the complaint should not be dismissed, or (2) file an amended complaint. The Court  
22 also notes that plaintiff has filed a motion for default judgment. Dkt. 5. That motion is hereby  
23 stricken without prejudice as premature. Plaintiff may re-file such motion if appropriate after his  
24 complaint is served.

25                   Screening Requirements

26                   The Court must dismiss the complaint of a prisoner proceeding *in forma pauperis* "at any  
27 time if the [C]ourt determines" that the action: (a) "is frivolous or malicious"; (b) "fails to state a  
28 claim on which relief may be granted" or (c) "seeks monetary relief against a defendant who is

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30                   <sup>1</sup> Dkt. 1-1.

1 immune from such relief.” 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915A(a), (b). A complaint is  
2 frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745 F.3d 1221, 1228  
3 (9th Cir. 1984).

4 Before the Court may dismiss the complaint as frivolous or for failure to state a claim,  
5 though, it “must provide the [prisoner] with notice of the deficiencies of his or her complaint and  
6 an opportunity to amend the complaint prior to dismissal.” *McGucken v. Smith*, 974 F.2d 1050,  
7 1055 (9th Cir. 1992); *see also Sparling v. Hoffman Constr., Co., Inc.*, 864 F.2d 635, 638 (9th Cir.  
8 1988); *Noll v. Carlson*, 809 F.2d 1446, 1449 (9th Cir. 1987). On the other hand, leave to amend  
9 need not be granted “where the amendment would be futile or where the amended complaint  
10 would be subject to dismissal.” *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

11 Rule 8(a) of the Federal Rules of Civil Procedure provides that in order for a pleading to  
12 state a claim for relief it must contain a short and plain statement of the grounds for the court’s  
13 jurisdiction, a short and plain statement of the claim showing that the pleader is entitled to relief,  
14 and a demand for the relief sought. The statement of the claim must be sufficient to “give the  
15 defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”  
16 *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The factual allegations of a complaint must be  
17 “enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
18 550 U.S. 544, 555 (2007). In addition, a complaint must allege facts to state a claim for relief  
19 that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

20 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show (1) that  
21 he suffered a violation of rights protected by the Constitution or created by federal statute, and  
22 (2) that the violation was proximately caused by a person acting under color of state or federal  
23 law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a  
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1 plaintiff must allege facts showing how individually named defendants caused, or personally  
2 participated in causing, the harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350,  
3 1355 (9th Cir. 1981).

4 Plaintiff's Complaint

5 Plaintiff's complaint purports to sue the State of Washington, the Department of  
6 Corrections (DOC), and John Doe Corrections Officers 1-20. Dkt. 1-1. Plaintiff's complaint form  
7 (Dkt. 1-1) does not provide any information regarding the substance of his claims but refers  
8 generally to roughly 200 pages of exhibits including grievances, incident reports, complaints and  
9 filings in a separate state court action, as well as some pages of narrative by the plaintiff. Dkt. 1-  
10 1, 1-2, 1-3, 1-4, 1-5, 1-6. The exhibits appear to relate to at least five separate and distinct  
11 transactions or occurrences on different dates or time periods: (1) on and around July 20, 2016;  
12 (2) on and around July 27, 2016; (3) on and around October 29, 2016; (4) on and around January  
13 22, 2015; and (5) on and around December 22, 2014. *Id.* The Court declines to order that  
14 plaintiff's complaint be served because it is deficient in several respects. The Court will first  
15 discuss the deficiencies of plaintiff's complaint as a whole and then will discuss more specific  
16 deficiencies with respect to each of the five separate transactions or occurrences referenced in  
17 plaintiff's exhibits.

18 **I. Deficiencies in the Complaint as a Whole**

19        a. *Improper Defendants*

20 Plaintiff names the State of Washington and the DOC, a state agency, as defendants in  
21 this action. States and state agencies are not "persons" within the meaning of § 1983. *Will v.*  
22 *Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989); *See Howlett v. Rose*, 496 U.S. 356, 365  
23 (1990); *Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007). States and state agencies are  
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1 immune from suit in federal court under the Eleventh Amendment unless a state expressly  
2 waives its constitutional immunity. *Alden v. Maine*, 527 U.S. 706 (1999). The State of  
3 Washington has not waived its Eleventh Amendment immunity. *McConnell v. Critchlow*, 661  
4 F.2d 116 (9th Cir. 1981); *Whiteside v. State of Washington*, 534 F.Supp. 774 (E.D. Wash. 1982).  
5 Therefore, the State of Washington and the DOC cannot be named as defendants.

6       b.     *“John Doe Corrections Officers” and Other Potential Defendants*

7              Plaintiff’s complaint also names “John Doe Corrections Officers 1-20.” While there are  
8 references to the names of various corrections officers and other DOC employees in some of  
9 plaintiff’s attached exhibits such as in grievances and incident reports, as well as some of the  
10 narrative portions of his exhibits, plaintiff does not identify or name any of these individuals as  
11 defendants on his complaint form (Dkt. 1-1). As such, the Court is unable to determine who  
12 plaintiff is intending to name as defendants in this action. To the extent plaintiff is seeking to  
13 name any of the individual corrections officers or other individuals mentioned in his various  
14 attached exhibits as defendants, *if he chooses to amend the complaint, then in his amended*  
15 *complaint plaintiff is directed to use Section III of the complaint form provided by the court –*  
16 *the Section with the title, “Parties to this Complaint” -- to identify each of the individual*  
17 *defendants who are sued in their individual capacity, and any defendant who is sued in his or*  
18 *her official capacity.*

19       c.     *Rule 8, Personal Participation, and Stating a Claim under §1983*

20              Plaintiff’s complaint, as written, fails to comply with the requirements of Rule 8. As  
21 noted above, plaintiff’s complaint form (Dkt. 1-1) does not provide any information regarding  
22 the substance of his claims but refers generally to roughly 200 pages of exhibits including  
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1 grievances, incident reports, complaints and filings in a separate state court action, as well as  
2 some pages of narrative by the plaintiff.

3 ***If plaintiff files an amended complaint, plaintiff is directed to use Section IV***  
4 ***“Statement of Claim” portion of the complaint form provided by the Court*** to write out short,  
5 plain statements telling the Court: (1) the constitutional right plaintiff believes was violated; (2)  
6 the name of the person (defendant) who violated the right; (3) exactly what that person did or  
7 failed to do; (4) how the action or inaction of that person is connected to the violation of  
8 plaintiff’s constitutional rights; and (5) what specific injury plaintiff suffered because of that  
9 person’s conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72 (1976).

10 If the person named as a defendant was a supervisory official, plaintiff must either state  
11 that the defendant personally participated in the constitutional deprivation (and tell the Court the  
12 five things listed above), or plaintiff must state, if he can do so in good faith, that the defendant  
13 was aware of the similar widespread abuses, but with deliberate indifference to plaintiff’s  
14 constitutional rights, failed to take action to prevent further harm to plaintiff and also state facts  
15 to support this claim. *See Monell v. NYC Dept. of Social Services*, 436 U.S. 658, 691 (1978).

16 Plaintiff must repeat this process for each person he names as a defendant, including any  
17 “John Doe” (or “Jane Doe”) defendants. ***If plaintiff fails to affirmatively link the conduct of***  
18 ***each named defendant with the specific injury suffered by plaintiff, the claim against that***  
19 ***defendant will be dismissed for failure to state a claim.*** Conclusory allegations that a defendant  
20 or a group of defendants have violated a constitutional right are not acceptable and will be  
21 dismissed.

22 Plaintiff may attach extra sheets to the form provided by the Court if necessary.  
23 Furthermore, plaintiff may attach additional documents to support the facts of his claims but he  
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1 should specify which portion of the document(s) (i.e., page and paragraph) he is relying on to  
2 support the specific fact(s) of his claim(s). ***If plaintiff fails to adequately specify the portion of***  
***the supporting document(s), the Court may disregard the document(s).***

4           d. *Exhaustion of Available Administrative Remedies*

5           The Prison Litigation Reform Act of 1995 (“PLRA”) provides: “No action shall be  
6 brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by  
7 a prisoner confined in any jail, prison, or other correctional facility until such administrative  
8 remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion is a prerequisite to  
9 all prisoner lawsuits concerning prison life, whether such actions involve general conditions or  
10 particular episodes, whether they allege excessive force or some other wrong, and even if they  
11 seek relief not available in grievance proceedings, such as money damages. *Porter v. Nussle*, 534  
12 U.S. 516, 524 (2002).

13           Inmates are required to fully exhaust available administrative remedies; they also must  
14 exhaust those remedies in a timely manner; and they must abide by the administrative rules  
15 governing the internal grievance process. *Woodford v. Ngo*, 548 U.S. 81, 90 (2006). To  
16 effectively exhaust his administrative remedies, an inmate is required to use all the formal steps  
17 of the prison grievance process. *Griffin v. Arpaio*, 557 F.3d 1117, 1119 (9th Cir. 2009). Because  
18 the purpose of exhaustion is to give prison administrators a chance to resolve the issues, the  
19 inmate must exhaust each of his claims by bringing grievances that are detailed and factual,  
20 including enough specifics to notify officials of the alleged harm. *Id.* at 1120.

21           In his complaint, plaintiff indicates that he has not filed grievances concerning the facts  
22 relating to this complaint because he is “not a attorney and has PTSD from stress disorder and is

1 unable to prosecute this claim.” Dkt. 1-1, at 2. Yet some grievance forms plaintiff filed related to  
2 some of his claims are included amongst plaintiff’s exhibits.

3 If he files an amended complaint, plaintiff should clarify whether or not he has filed  
4 grievances concerning the facts relating to any of the claims raised in his complaint and -- if he  
5 has not – he must explain in detail why he has failed to do so. He should also attach a copy of the  
6 final grievance resolution for any grievance filed concerning facts related to his claims.

7 **II. Events On or Around July 20, 2016 and July 27, 2016**

8       a. *Excessive Force*

9 Plaintiff submits several pages entitled “chronology of events 7-20-16 forward.” Dkt. 1-3,  
10 at 20-25; Dkt. 1-6, at 20-23. The first section of this narrative states that on July 20, 2016, for  
11 reasons unknown to plaintiff, he was ordered by Sgt. Finn to “stand for search.” Dkt. 1-3, at ¶¶ 1-  
12 15.

13 Plaintiff indicates he moved to Sgt. Finn’s location and stood waiting to be searched. *Id.*  
14 After standing for 30 seconds, without being searched, Sgt. Finn ordered plaintiff back to his  
15 unit. *Id.* Plaintiff states he was confused and before he could react or move, “2 or 3 C/O’s  
16 attacked me, one twisting my head and neck … meanwhile I was handcuffed with all the C/O’s  
17 yelling ‘STOP RESISTING’, which I was not[.]” *Id.*

18 The corrections officers then lead plaintiff back toward the F-unit when his left leg gave  
19 out “and/or I was tripped.” *Id.* On the way down, plaintiff alleges “a C/O kneed me in the  
20 stomach as hard as he could … my head and neck were again twisted.” *Id.* Plaintiff states he fell  
21 to the ground and the corrections officers continued to “pummel” him. *Id.* Plaintiff indicates he  
22 was unable to walk and so was taken in a wheelchair to a holding cell in the IMU and “dumped”  
23 on the floor where he became unconscious. *Id.*

1       The Eighth Amendment governs post-conviction claims of excessive force. The core  
2 inquiry under the Eighth Amendment standard is whether the force was applied “in a good-faith  
3 effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson v.*  
4 *McMillian*, 503 U.S. 1, 6-7 (1992).

5       The extent of the injury suffered by the plaintiff is a relevant but not dispositive  
6 consideration. *Hudson v. McMillian*, 503 U.S. at 7. While the Eighth Amendment does not reach  
7 *de minimis* uses of physical force, a claim is not foreclosed merely because the resulting injury  
8 was only minimal. 503 U.S. at 9-10; *Wilkins v. Gaddy*, 599 U.S. 34, 38-39 (2010).

9       In determining whether force is excessive, the court evaluates whether the defendants had  
10 a subjectively wanton state of mind when they engaged in the use of force, including considering  
11 the following factors: the need for the application of force; the relationship between that need  
12 and the amount of force used; the threat reasonably perceived by the defendants, and any efforts  
13 made to temper the severity of a forceful response. *Hudson v. McMillan*, 503 U.S. at 7.

14       Plaintiff describes facts which may allege a potential claim for excessive force. However,  
15 plaintiff fails to name Sgt. Finn as a defendant. Also, plaintiff does not identify any of the  
16 corrections officers allegedly involved; he does not allege who took what action; he does not  
17 allege whether any person failed to take action if such person had a duty to act; and he does not  
18 allege any causal connection between acts or omissions of specific defendant(s), and a  
19 constitutional violation. Plaintiff attaches various grievance forms and incident reports which  
20 appear to relate to this event and which include the names of some corrections officers.  
21 However, plaintiff has not named any of these corrections officers as defendant(s) and he does  
22 not describe what he believes each person did (or failed to do) to cause a violation of his  
23 constitutional rights. Until plaintiff identifies defendant(s), acts or omissions of defendant(s), and  
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1 a causal connection between the acts and omissions and a constitutional violation, his complaint  
2 cannot go forward. Accordingly, plaintiff should provide this information with as much detail as  
3 possible in his amended complaint.

4           *b. Medical Indifference*

5           The next section of plaintiff's narrative of events alleges that after he was left in his cell  
6 by the unnamed corrections officers and lost consciousness, he awoke in bed the next day, in a  
7 hospital, with tubes down his nose and throat. Dkt. 1-3, at ¶¶16-53. Plaintiff objects to the  
8 medical care he received both in the hospital as well as when he was returned to the prison.  
9 Plaintiff lists several individuals who it appears he believes failed to provide him with proper  
10 medical care. Specifically, plaintiff lists a male nurse at the hospital, an unnamed corrections  
11 officer, PA Light, Dr. Smith, RN Skinner and C.O. Dickerson. However, plaintiff fails to name  
12 these individuals as defendants in the action or specifically link their conduct to an alleged  
13 constitutional violation.

14           The Court also notes that plaintiff also attaches several incident reports related to events  
15 on July 27, 2016. Dkt. 1-6, at 9-18. The incident reports appear to indicate plaintiff was found on  
16 the floor convulsing and unresponsive, that several nurses and corrections officers entered, he  
17 was moved to the medical building and later admitted to the "IPU." *Id.* However, aside from  
18 attaching these incident reports, plaintiff fails to name any of the nurses or corrections officers as  
19 defendants and does not appear to make any specific allegations that his constitutional rights  
20 were violated in any way during this incident.

21           To state a constitutional claim for lack of medical care, a plaintiff must include factual  
22 allegations that a state actor acted with deliberate indifference to his serious medical needs. A  
23 determination of deliberate indifference involves an examination of two elements: the  
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1 seriousness of the prisoner's medical need and the nature of the defendant's response to that  
2 need. *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992). First, the alleged deprivation  
3 must be, objectively, "sufficiently serious." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). A  
4 "serious medical need" exists if the failure to treat a prisoner's condition would result in further  
5 significant injury or the unnecessary and wanton infliction of pain contrary to contemporary  
6 standards of decency. *Helling v. McKinney*, 509 U.S. 25, 32–35 (1993); *McGuckin*, 974 F.2d at  
7 1059.

8 Second, the prison official must be deliberately indifferent to the risk of harm to the  
9 inmate. *Farmer*, 511 U.S. at 834. An official is deliberately indifferent to a serious medical need  
10 if the official "knows of and disregards an excessive risk to inmate health or safety." *Id.* at 837.  
11 In assessing whether the official acted with deliberate indifference, a court's inquiry must focus  
12 on what the prison official actually perceived, not what the official should have known. *See*  
13 *Wallis v. Baldwin*, 70 F.3d 1074, 1077 (9th Cir. 1995). Moreover, a plaintiff cannot succeed on  
14 the merits based on a claim of negligence or his own general disagreement with the treatment he  
15 has received. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Hutchinson v. United States*, 838 F.2d  
16 390, 394 (9th Cir.1988).

17 Plaintiff fails to properly identify a defendant and states insufficient facts to state a claim  
18 for medical indifference. In order to state a claim for medical indifference, plaintiff must  
19 properly identify a defendant or defendants and allege facts to establish that the defendant(s)  
20 knew of and disregarded an excessive risk to his health or safety.

21       c. *Verbal Harrassment*

22 Plaintiff also alleges that unnamed corrections officers sang in his ear on one trip down  
23 the hallway to x-ray "in an attempt to annoy" him or use this as some kind of "PSYOPS." Dkt. 1-  
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1 3, at 22. Plaintiff should keep in mind that “verbal harassment generally does not violate the  
2 Eighth Amendment.” *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996). Plaintiff’s description  
3 of these events, without more, does not establish a constitutional violation.

4       d. *Retaliation*

5           Plaintiff also alleges that in “retaliation” for his “singing” in response to questioning by  
6 an unnamed corrections officer and unidentified woman, he was moved to an “F-unit”  
7 observation room which “reeked”, the toilet was “funky” and the sink dirty and stained. Dkt. 1-3,  
8 at ¶¶31-32.

9           “*A prisoner suing prison officials under 1983 for retaliation must allege that he was*  
10 *retaliated against for exercising his constitutional rights and that the retaliatory action does not*  
11 *advance legitimate penological goals, such as preserving institutional order and discipline.”*  
12 *Barnett v. Centoni*, 31 F.3d 813, 815–16 (9th Cir. 1994) (per curiam) (*citing Rizzo v. Dawson*,  
13 778 F.2d 527, 532 (9th Cir.1985)). These claims must be evaluated in the light of the deference  
14 that must be accorded to prison officials. *See Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir.1995).  
15 The prisoner must establish a link between the exercise of constitutional rights and the allegedly  
16 retaliatory action. *Id.* Finally, the prisoner must demonstrate that his first amendment rights were  
17 actually chilled by the alleged retaliatory action. *See Resnick v. Hayes*, 213 F.3d 443, 449 (9th  
18 Cir. 2000).

19           Plaintiff fails to properly identify a defendant and states insufficient facts to state a claim  
20 for retaliation. To properly state a claim of retaliation, plaintiff must not only name the  
21 individuals and identify the constitutional activity in which he was engaged, he must also  
22 describe what retaliatory action each individual took, explain why the action did not advance  
23 legitimate penological goals, and describe how his First Amendment rights were actually chilled

1 by the retaliatory action. If plaintiff intends to pursue this claim, he should include all of his  
2 factual allegations against any of the defendants relating to his claim or claims of retaliation in  
3 one section of his amended complaint.

4           *e. Other Claims*

5           To the extent plaintiff intends to raise other claims with respect to July 20, 2016 and July  
6 27, 2018, in his amended complaint he must allege facts sufficient to satisfy the five  
7 requirements for stating a claim set forth in Section I (c) (pages 4-5).

8           **III. Events On or Around October 17, 2016**

9           In another section of the exhibits attached to his complaint, plaintiff contends he was  
10 harassed by his cell mate and, although he was told by his counselor he would not have to move  
11 from his cell, he was ordered to move to another cell on an upper level. Dkt. 1-6, at 20-30.  
12 Plaintiff contends he was recovering from surgery and believed he had an “HSR” indicating he  
13 needed to be assigned to a lower bunk on a lower tier. *Id.*

14           Plaintiff states he was infracted for refusing to change his cell assignment. *Id.* Plaintiff  
15 appears to take issue with these events but it is unclear to the Court exactly what rights he is  
16 alleging were violated. If plaintiff believes in good faith he has a basis to proceed with any  
17 claims related to this occurrence in his amended complaint he must allege facts sufficient to  
18 satisfy the five requirements for stating a claim set forth in Section I (c) (pages 4-5).

19           Plaintiff is further advised that if he believes he is able to cure these deficiencies and  
20 includes claims related to these events in his amended complaint, the Court may yet require the  
21 plaintiff to bring them in a separate action as they appear unrelated to the other claims in the  
22 complaint.

23           **IV. Events On or Around October 29, 2016**

1 Plaintiff submits various documents which appear to relate to a state court action in  
2 which plaintiff alleged his toilet overflowed and unidentified individuals failed to adequately  
3 clean his cell. Dkt. 1-2. However, plaintiff alleges nothing in narrative form with respect to *this*  
4 case nor does he identify what constitutional or federal statutory right he believes was violated.

5 The Eighth Amendment prohibits cruel and unusual punishment of a person convicted of  
6 a crime. U.S. Const. amend. VIII. To the extent plaintiff intends to challenge his conditions of  
7 confinement related to this incident as violating the Eighth Amendment, he must make two  
8 showings. First, the plaintiff must make an “objective” showing that the deprivation was  
9 “sufficiently serious” to form the basis for an Eighth Amendment violation. *Wilson v. Seiter*,  
10 501 U.S. 294, 298 (1991). Second, the plaintiff must make a “subjective” showing that the  
11 prison official acted “with a sufficiently culpable state of mind.” *Id.*

12 Although the routine discomfort inherent in the prison setting is inadequate to satisfy the  
13 objective prong of an Eighth Amendment inquiry, “those deprivations denying ‘the minimal  
14 civilized measure of life’s necessities’ are sufficiently grave to form the basis of an Eighth  
15 Amendment violation.” *Id.* (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). Prison  
16 officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing,  
17 sanitation, medical care, and personal safety. *See Farmer*, 511 U.S. at 832; *Keenan v. Hall*, 83  
18 F.3d 1083, 1089 (9th Cir.1996); *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir.1982).

19 The circumstances, nature, and duration of a deprivation of these necessities must be  
20 considered in determining whether a constitutional violation has occurred. “The more basic the  
21 need, the shorter the time it can be withheld.” *Hoptowit*, 682 F.2d at 1259; *see also Anderson v.*  
22 *County of Kern*, 45 F.3d 1310, 1314, *as amended*, 75 F.3d 448 (9th Cir.1995). “[S]ubjection of a  
23 prisoner to lack of sanitation that is severe or prolonged can constitute an infliction of pain

1 within the meaning of the Eighth Amendment.” *Anderson*, 45 F.3d at 1314; *see also Johnson v.*  
2 *Lewis*, 217 F.3d 726, 731-32 (9th Cir. 2000); *Hoptowit v.* 753 F.2d at 783.

3       If plaintiff intends to pursue this claim he cannot simply attach documents related to a  
4 different lawsuit but must make any allegations in narrative form on the Court’s complaint form  
5 or (if there is insufficient space) on an additional sheet attached to that form. He should also  
6 identify the individuals he believes are responsible as defendants and include all of his factual  
7 allegations relating to his conditions of confinement against specifically named defendants in one  
8 section of his amended complaint. He should also explain the conditions he is challenging in  
9 detail and explain how he believes those conditions violated his rights.

10       Plaintiff is further advised that if he believes he is able to cure these deficiencies and  
11 includes claims related to these events in his amended complaint, the Court may yet require him  
12 to bring them in a separate action as they appear unrelated to the other claims in the complaint.

13       **V. Events On or Around December 22, 2014, and January 21, 22, 2015**

14       Plaintiff attaches what appear to be documents also related to a state court action  
15 indicating that on or around December 22, 2014, a corrections officer inadvertently hit plaintiff  
16 in the mouth causing pain and swelling and that he was denied pain medication for his injuries.  
17 Dkt. 1-2, at 34-44. Plaintiff also appears to allege that on January 21 or 22, 2015, he was  
18 assaulted by another inmate and that he was subsequently provided inadequate medical care for  
19 his injuries. Dkt. 1-3, at 1-19.

20       Plaintiff is advised that any claims related to these events appear to be untimely and  
21 barred by the statute of limitations. Although the statute of limitations is an affirmative defense  
22 which normally may not be raised by the Court *sua sponte*, it may be grounds for *sua sponte*  
23 dismissal of an *in forma pauperis* complaint where the defense is complete and obvious from the  
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1 face of the pleadings or the Court's own records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228–  
2 30 (9th Cir. 1984).

3 The Civil Rights Act, 42 U.S.C. § 1983, contains no statute of limitations. As such, the  
4 statute of limitations from the state cause of action most like a civil rights act is used. In  
5 Washington, a plaintiff has three years to file an action. *Rose v. Rinaldi*, 654 F.2d 546 (9th  
6 Cir.1981); RCW 4.16.080(2). Federal law determines when a civil rights claim accrues.  
7 *Tworivers v. Lewis*, 174 F.3d 987, 991 (9th Cir.1999). A claim accrues when the plaintiff knows  
8 or has reason to know of the injury which is the basis of the action. *Kimes v. Stone*, 84 F.3d  
9 1121, 1128 (9th Cir. 1996); *see also Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir.2001), quoting  
10 *Tworivers*, 174 F.3d at 992. The proper focus is upon the time of the discriminatory acts, not  
11 upon the time at which the consequences of the acts became most painful. *Abramson v. Univ. of  
12 Hawaii*, 594 F.2d 202, 209 (9th Cir.1979).

13 The Court also applies the forum state's law regarding equitable tolling for actions  
14 arising under § 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington, courts  
15 permit equitable tolling “when justice requires.” *Millay v. Cam*, 135 Wash.2d 193, 206 (1998).  
16 “The predicates for equitable tolling are bad faith, deception, or false assurances by the  
17 defendant and the exercise of diligence by the plaintiff.” *Id.* Courts “typically permit equitable  
18 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable  
19 neglect.” *State v. Robinson*, 104 Wash.App. 657, 667 (2001) (internal quotations omitted).  
20 Washington State also allows for a tolling period when a person is imprisoned on a criminal  
21 charge prior to sentencing. *See R.C.W. § 4.16.190; see also Williams v. Holevinski*, 2006 WL  
22 216705, \*2 (E.D. Wash. July 31, 2006).

1 Here, it appears from the face of the complaint that the plaintiff had actual knowledge of  
2 the facts related to the claims alleged in December 2014 and January 2015 respectively. The time  
3 for filing a lawsuit expired three years later in December 2017 and January 2018. Plaintiff  
4 initially presented his motion to proceed *in forma pauperis* to the court on June 22, 2018, several  
5 months after the last possible date the statute of limitations expired with respect to claims arising  
6 from both of these incidents. Plaintiff has not shown statutory or equitable tolling is applicable in  
7 this case. Therefore, plaintiff must show cause why these claims should not be dismissed as  
8 untimely.

9 Plaintiff is further advised that if he believes he is able to cure these deficiencies and  
10 includes claims related to these events in his amended complaint, the Court may yet require him  
11 to bring them in a separate action as they appear unrelated to the other claims in the complaint.

## Instructions to Plaintiff and the Clerk

13 Due to the deficiencies described above, the Court will not serve the complaint. The  
14 Court directs that plaintiff has a deadline -- **on or before November 23, 2018** -- plaintiff may  
15 either (1) show cause why his complaint should not be dismissed, or (2) he may file an amended  
16 complaint to cure, if possible, the deficiencies explained above. If he decides to file an amended  
17 complaint, it must be legibly rewritten or retyped in its entirety and contain the same case  
18 number, and it will completely replace the original complaint. Any cause of action alleged in the  
19 original complaint that is not alleged in the amended complaint is waived. *Forsyth v. Humana,*  
20 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds, Lacey v.*  
21 *Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

If plaintiff files an amended complaint, the Court will screen the amended complaint to determine whether it states a claim for relief cognizable under 42 U.S.C. § 1983. If the amended

1 complaint is not filed on or before November 23, 2018 -- or if the amended complaint fails to  
2 adequately address the issues raised herein -- the undersigned will recommend dismissal of this  
3 action under 28 U.S.C. § 1915, as frivolous or for failure to state a claim, and the dismissal will  
4 count as a “strike” under 28 U.S.C. § 1915(g). Plaintiff should be aware that a prisoner who  
5 brings three or more civil actions or appeals that are dismissed on the grounds that they are  
6 legally frivolous, malicious, or fail to state a claim, will be precluded from bringing any other  
7 civil action or appeal *in forma pauperis*, “unless the prisoner is under imminent danger of serious  
8 physical injury.” 28 U.S.C. § 1915(g).

9 Plaintiff’s motion for default judgment is also hereby stricken without prejudice as  
10 premature. Plaintiff may re-file such motion if and when appropriate after his complaint is  
11 served.

12 The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
13 civil rights complaint and for service, a copy of this Order and the *Pro Se* Information Sheet.

14 Dated this 24th day of October, 2018.

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18 Theresa L. Fricke  
United States Magistrate Judge  
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